

PUBLIC

ANNEX A

THE APPEALS CHAMBER
OF THE INTERNATIONAL
CRIMINAL COURT

COMMENTARY AND DIGEST
OF JURISPRUDENCE

FABRICIO GUARIGLIA, BEN BATROS,
REINHOLD GALLMETZER
AND GEORGE MUGWANYA

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Fairness, Expeditiousness of the Proceedings, and Rights of the Accused

Commentary

GEORGE MUGWANYA

Human rights in general, and fair trial guarantees in particular, are a core norm underlying the Court's justice system. Indeed, "[h]uman rights underpin the Statute; every aspect of it [...]. Its provisions must be interpreted and, more importantly, applied in accordance with internationally recognised human rights; first and foremost, in the context of the Statute [and] the right to a fair trial, a concept broadly perceived and applied, embracing the judicial process in its entirety."¹ The right to fair trial is immutable.² A fair trial is the only means to do justice, and where breaches of the Accused's rights are such as to make it impossible for the Accused to make his or her defence within the framework of his or her rights, the trial may be stayed.³ Since the Court's inception, to date the Appeals Chamber has elucidated various aspects of fair trial guarantees. Other Chambers, the Presidency and the Plenary have also played a critical role. There are, however, some areas that require further elaboration.

I The Mandate of the Court: Ensuring a Fair and Expeditious Trial

Under article 64(2), every Trial Chamber shall ensure that "[a] trial is fair and expeditious and is conducted with full respect for the rights

¹ *Prosecutor v. Lubanga*, Judgment on Lubanga's Jurisdiction Appeal, ICC-01/04-01/06-772 OA4, 14 December 2006, para. 37.

² *Prosecutor v. Lubanga*, Decision on Disclosure Issues, Responsibilities for Protective Measures and Other Procedural Matters, ICC-01/04-01/06-1311-Anx2, 8 May 2008, para. 94.

³ *Prosecutor v. Lubanga*, Judgment on Lubanga's Jurisdiction Appeal, ICC-01/04-01/06-772 OA4, 14 December 2006, paras. 37, 39.